

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-D-394-DB of 2013**

DATE OF DECISION: JANUARY 11, 2017

KULDEEP @ BALKAR AND OTHERS ...APPELLANTS

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-D-519-DB of 2013**

MANOJ @ SHERU ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. AMAN PAL, ADVOCATE FOR THE APPELLANTS
IN CRA-D-394-DB OF 2013.

MR. VIVEK KHATRI, ADVOCATE FOR THE APPELLANT
IN CRA-D-519-DB OF 2013.

MR. SAGAR AGGARWAL, ADVOCATE FOR THE COMPLAINANT.

MR. ASHOK MUTHREJA, DAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Manoj @ Sheru, Kuldeep @ Balkar, Harjeet @ Banti, Ashok @ Patwari, Rajneesh @ Thakur, Amit son of Satbir and Amit son of Suresh were sent up by the investigating agency to face trial for the charges under Sections 148, 323, 324, 307, 302, 395 and 447 read with Section 149 IPC and Section 25 of Arms Act. Accused Harjeet @ Banti had died during the pendency of trial and accused Kuldeep @ Pala being a juvenile was sent up to

face enquiry before the Juvenile Justice Board. Accused Amit son of Suresh and accused Amit son of Satbir were acquitted of the charges. Therefore, Kuldeep @ Balkar, Ashok @ Patwari, Rajneesh @ Thakur have jointly preferred CRA-D-394-DB of 2013 and Manoj @ Sheru has independently preferred CRA-D-519-DB of 2013.

2. The case, in brief, of the prosecution is that PW1 complainant Satbir Singh, his sons Rajbir and Udey Singh @ Somvir jointly cultivated the wheat crop in the panchayat land alongwith Baljeet and Attar Singh on lease basis. They had harvested the crop through Combine. On 11.4.2010, at about 10.30 a.m. complainant Satbir Singh having received an information that some people were making chaff of the wheat straw in the panchayat land by a machine, proceeded alongwith his son Udey Singh, his father Mauji Ram, his brothers Rohtas and Ajit Singh, Ashok son of Jagminder and his son Rajbir proceeded to the panchayat land. The complainant party asked the accused party not to make chaff. Accused Manoj @ Sheru was armed with sword, Kuldeep @ Balkar, another Kuldeep and Harjeet @ Banti were armed with ballam, accused Rajneesh and Ashok were armed with Jailies, accused Amit son of Satbir and Amit son of Suresh were armed with Lathies. When the complainant party raised an objection for making the fodder, accused Manoj @ Sheru having given lalkara gave a sword blow on the head of Udey Singh. Accused Balkar gave ballam blow on the right thigh of Udey Singh. Kuldeep gave a ballam blow on the left thigh of Udey Singh. Harjeet @ Banti gave two blows of ballam on both the thighs of Udey Singh. When the complainant party tried to save Udey Singh, all the accused joined together and attacked PW1 Satbir Singh, PW2 Rohtas and

PW20 Ajit Singh @ Jeet Singh. PW4 Jagminder reached the spot alongwith licenced double barrel gun. All the accused gave him beatings and snatched his double barrel gun. Thereafter, accused Kuldeep @ Balkar fired about 6 shots upon the complainant party with an intention to kill them, but they narrowly escaped.

3. PW16 ASI Jai Bhagwan recovered a sword and a double barrel gun along with two live cartridges from the house of accused Manoj @ Sheru on the basis of the disclosure statement suffered by him. He also recovered two tractors and one motorcycle and one ballam from the house of accused Kuldeep @ Balkar on the basis of the disclosure statement suffered by him. Accused Rajneesh got recovered one Jaili on the basis of the disclosure statement suffered by him. Accused Ashok got recovered one Jaili on the basis of disclosure statement suffered by him.

4. The FSL report Ex.PA discloses that blood was detected on the ballam recovered at the instance of accused Kuldeep @ Balkar. No blood stain was found on the ballam recovered from accused Harjeet @ Banti and Kuldeep @ Gallar. No blood also was detected from the sword recovered from accused Manoj @ Sheru.

5. PW6 Dr. G.P. Aggarwal medico-legally examined PW2 Rohtas on 11.4.2010 at 12.15 p.m. and found an incised wound over right thigh, another incised wound on the right thigh, bruises on the back and right hip joint. He also medico-legally examined PW4 Jagminder and found lacerated wound on the front of the head, another lacerated wound on the forehead, lacerated wound on the lower lip, bruise on the left hand, swelling on his left knee joint, bruise on

the back and multiple bruises on different parts of the body. PW6 also noted that upper incisor tooth was missing from the jacket. He also medico-legally examined PW20 Ajit Singh @ Jeet Singh and found lacerated wound on the left side of the head, another lacerated wound on the back of left ear, swelling with bruises on the left arm and left hand. He also medico-legally examined Mauji Ram and found lacerated wound on the right elbow. It is to be noted that Mauji Ram was not examined by the prosecution during the course of trial.

6. PW3 Dr. Anuradha Aggarwal conducted post mortem examination on the dead body of Udey Singh @ Somvir on 11.4.2010. She found a lacerated wound on the left parieto occipital region. The underlying bone was found fractured. On exploration, membranes were found torn, brain matter was lacerated and blood was found on the cranial cavity. There was abrasion with contusion over the left arm. There was also abrasion with contusion over the forehead. Sharp incised wound was found on the right thigh and another sharp incised wound was found just above the earlier injury. There was also a sharp incised wound on the left thigh just above the previous injury. There was also abrasion over the left thigh. PW3 has opined that the deceased had died due to shock on account of head injury described in the post mortem certificate.

7. In their statements under Section 313 Cr.P.C. all the accused have come out with a plea that a false case was foisted on them. They had not committed any offence as projected by the prosecution. The recovery also was planted by the prosecution, it was submitted.

8. The trial Court having adverted to the evidence on record, returned a verdict of conviction as against the accused-appellants.

9. PW1 Satbir who was the complainant and father of the deceased and PW2 Rohtas, PW4 Jagminder and PW20 Ajit Singh @ Jeet Singh who were the brothers of PW1 are found to be the star witnesses in this case.

10. PW1, PW2, PW4 and PW20 have categorically stated that they were attacked by the accused-appellants and other co-accused and as a result of which they sustained injuries. PW6 Dr. G.P. Aggarwal has medico-legally examined PW2 Rohtas, PW4 Jagminder and PW20 Jeet Singh @ Ajit Singh. Though he had examined Mauji Ram, father of PW1, we are not concerned with the injury sustained by him as he had not subjected himself for examination during the course of trial. The fact remains that PW2 Rohtas, PW4 Jagminder and PW20 Jeet Singh @ Ajit Singh had sustained multiple injuries and the same were certified by PW6 on medico-legal examination. Therefore, the evidence of PW1 being the complainant and father of deceased and the evidence of PW2, PW4 and PW20 being the injured witnesses at the scene of crime cannot be simply ignored by the Court of law. In other words, their testimony will have to be placed on a higher pedestal as the challenge to their presence at the scene of crime pales into insignificance. The very fact that they had sustained injury in the occurrence and were hospitalized for treatment would go to establish that they were very much available at the scene of crime and witnessed the occurrence. Further, they have categorically deposed that though the lease was taken in the name of Baljeet, they have not jointly undertaken agricultural work on the leasehold panchayat land. No wonder, PW2, PW4 and PW20 had gone to the scene of crime to protest the preparation of fodder at the leasehold land.

11. PW1, PW2, PW4 and PW20 have categorically deposed before the

trial Court that all the accused were armed with lethal weapons and accused Manoj @ Sheru who was armed with sword delivered a blow on the head of the deceased. Accused Kuldeep @ Balkar who was armed with ballam delivered a blow on the thigh of Udey Singh. When the deceased fell down, all the accused started inflicting multiple injuries on the person of Udey. They have also deposed that accused attacked them and caused injuries.

12. It is true that PW1, PW2, PW4 and PW20 are brothers by relation. Their testimony cannot be thrown away on the sole basis that they are related to each other. The very fact that they had some interest in the land where the occurrence had taken place and that they had also sustained injuries in the occurrence would demonstrate that they were very much present at the scene of crime.

13. Learned counsel appearing for the appellants vehemently submitted that the prosecution has come out with the evidence of interested witnesses. No other independent witness was examined to corroborate the testimony of PW1, PW2, PW4 and PW20 who are brothers by relation.

14. The Hon'ble Supreme Court in **Gian Chand and others vs. State of Haryana, Crl.A. No.2302 of 2010, decided on 23.7.2013** has held that mere non-association of an independent witness where evidence of prosecution witnesses is found to be cogent, convincing, creditworthy and reliable cannot cast doubt on the version put forth by the prosecution.

15. It is not the number of witnesses, but the quality of evidence adduced by the prosecution that will have to be weighed by the Court of law. No independent corroboration is required in the instant case as the injured witnesses

have come out with reliable and trustworthy testimony.

16. Learned counsel appearing for the appellants vehemently submitted that there was no proof that the complainant party had got the panchayat land where the occurrence took place on lease. In other words, motive attributed to the accused is highly doubtful, it was submitted. The witnesses examined on the side of the prosecution have categorically deposed that though the lease was taken in the name of Baljeet, the complainant party joined him and cultivated the land. If at all the complainant party had not been cultivating the subject land, there was no question of raising objection by them for making of fodder by the accused. The testimony of the witnesses adduced in one voice demonstrates that they in fact cultivated the subject land where the occurrence took place. Therefore, we find that there is no force in the statement made by the counsel appearing for the appellants that the complainant party was a stranger to the subject land and thereby motive for the occurrence was not established.

17. Even assuming for the sake of arguments that motive, for the occurrence was not established by the prosecution, it has been held by the Hon'ble Supreme Court in *Gosu Jairami Reddy vs. State of A.P., 2011 AIR (SC) 3147* that motive for the occurrence pales into insignificance in a case based on eye witness account. The existence or otherwise of a motive plays a significant role only in cases based on circumstantial evidence.

18. PW1, PW2, PW4 and PW20 have come out with a categorical assertion that PW4 Jagminder arrived at the scene of crime with double barrel gun, but the same was snatched away by accused Kuldeep @ Balkar. He fired 6 shots, but it did not hit any of the complainant party. In this context, it is

relevant to refer to the evidence of PW4 who allegedly descended at the scene of crime with a double barrel gun. He has unambiguously stated that empty cartridge, cotton and cardweeds do not automatically come out from the double barrel gun. The had to be taken out if second shot was to be fired from the same barrel. Under such circumstances, we are of the view that accused Kuldeep @ Balkar could not have fired more than 2 shots having snatched the double barrel gun from PW4, as there was no evidence to show that the unloaded cartridges were also snatched away by accused Kuldeep @ Balkar from PW4 Jagminder. Further, had accused Kuldeep @ Balkar fired 6 shots against 4-5 persons with an intention to kill them, it would have hit at least one of them. Therefore, in our considered view, this story of the prosecution that accused Kuldeep @ Balkar having snatched the double barrel gun from PW4 fired 6 shots at the complainant party does not appear to be believable.

19. In the above context, it was submitted by learned counsel appearing for the appellants that the evidence of PW1, PW2, PW4 and PW20 who have come out with a false story as well has to be rejected. In other words, it is their submission that the Court has to accept the evidence in totality or reject it outrightly. Acceptance of a part of the evidence and rejection of the remainder of evidence would prejudice the accused, it was submitted.

20. The Hon'ble Supreme Court in **State of Maharashtra vs. Tulshiram Bhanudas Kamble & Ors., 2007 AIR (SC) 3042** has held as follows:-

“It is well known that in India the doctrine of falsus in uno falsus in omnibus (false in one false in all) does not apply. The court can

*partly reject and party accept the evidence of a witness, and it is not correct to say that merely because some part of the evidence is found to be false the entire evidence has to be rejected. [See **Krishna Mochi and others v. State of Bihar, 2002(2) RCR (Criminal) 567 : (2002) 6 SCC 81**].*

21. In view of the above settled proposition, we have no hesitation to accept the testimony of PW1, PW2, PW4 and PW20, establishing the charges found to have been proved before the trial Court. Referring to the FSL report Ex.PA it was submitted by the counsel for the appellants that no blood stain was found on the sword allegedly recovered from accused Manoj @ Sheru. It is true that the recovery memo prepared by PW16 ASI Jai Bhagwan discloses that the sword recovered from accused Manoj @ Sheru was found stained with blood. But the FSL report discloses that no blood stain could be detected on the sword. Firstly, the sword was not used by its sharp side. The injury noted down by post mortem Doctor discloses that only the blunt side of the sword was used to deliver heavy blow on the head of the deceased. Further, the weapon was recovered after a lapse of 7 days. The weapon was in fact in the custody of accused Manoj @ Sheru. Under such circumstances, lack of blood on the sword, in our considered view, does not loom large. Further, it is a well settled proposition of law that even if the weapon of offence was not recovered, the case of the prosecution does not fall to the ground. At least, in this case, the weapon of offence was recovered. Moreover, in the light of the voluminous ocular testimony available on record to speak in one voice that accused Manoj @ Sheru who was armed with sword attacked on the head of the deceased, non-detection

of blood on the sword by the chemical examiner does not go to the root of the case.

22. It was further argued by learned counsel appearing for the appellant that the sword is a sharp edged weapon. It could not have caused laceration on the head. Therefore, it is his submission that the evidence of eye witnesses that accused Manoj @ Sheru used sword to cause injury on the head of deceased is totally false. On a perusal of the medical testimony adduced by PW3 Dr. Anuradha Aggarwal who conducted post mortem examination on the dead body of Udey Singh @ Somvir, we find that the deceased had sustained a lacerated wound over the left parietal occipital region. It is true that a sharp edged weapon tends to cause incised wound and not a lacerated one. On a careful perusal of the entire evidence on record, we find that none of the witnesses has deposed that sharp edged portion of the sword was used by accused Manoj @ Sheru to cause the injury on the head of the deceased. But the evidence on record would establish that Manoj @ Sheru who was armed with sword attacked the deceased on his head and caused fatal injury. In our considered view, the reverse side of sword should have been used to cause the lacerated wound. Therefore, the case of the prosecution cannot be doubted in the above facts and circumstances.

23. Lastly, it was submitted by learned counsel appearing for appellant Manoj @ Sheru that in the sudden quarrel, only one injury was allegedly caused by accused Manoj @ Sheru on the deceased. Therefore, the conviction of the accused under Section 302 IPC may be altered into one under Section 304 Part I or Part II IPC.

24. Learned counsel appearing for appellant Manoj @ Sheru referred to

a decision of Orissa High Court in *Bipin Bihari Nag vs. State of Orissa, 2011(7) RCR (Criminal) 1396*. We have carefully perused the above decision rendered by the Hon'ble Orissa High Court. That was a case where the accused also sustained injuries in the occurrence. Those injuries had not been explained by the prosecution. Further, the accused in that case resisted the prosecution party in exercise of their private defence of person and property. There was no evidence adduced in that case that the deceased was actually in possession of Mahua trees which was the bone of contention. But in the instant case, the complainant party has established that they have been in cultivation of subject land on the basis of lease taken by Baljeet Singh. In fact, the complainant party in the instant case had to protect their property. None of the accused also sustained injury in the occurrence. Further, all the cases where only one injury had been caused by the accused would not automatically fall under the exception provided under Section 300 IPC leading to conviction under Section 304 IPC.

25. In view of the above, we are of the considered view that the trial Court has rightly held that the appellants along with others having formed unlawful assembly armed with lethal weapons committed criminal trespass and rioting and caused death of Udey Singh and caused simple injuries to PW2, PW4 and PW20. We do not find any merit in the appeal. Therefore, sustaining the conviction and sentence passed by the trial Court as against the accused-appellants, both the appeals are dismissed.

26. Accused-appellants Kuldeep @ Balkar, Ashok @ Patwari and Rajneesh @ Thakur are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief

Judicial Magistrate, Sonapat, who shall send them to jail to undergo the remaining part of the sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Sonapat shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

(M. JEYAPPAUL)
JUDGE

January 11, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes